

## NEWS & INSIGHTS

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# Pennsylvania court finds that bias suit can proceed under the Medical Marijuana Act

INSIGHTSLEGAL UPDATE

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A Pennsylvania court's recent interpretation of the Commonwealth's [Medical Marijuana Act](#) (MMA) found that employees are permitted to sue employers who violate the anti-discrimination provisions of the MMA. In *Palmiter v. Commonwealth Health Systems, Inc. et al*, (Palmiter) the Court of Common Pleas for Lackawanna County considered a case brought by an employee who was allegedly discharged solely for being a certified medical marijuana user.

## *Palmiter v. Commonwealth Health Systems, Inc.*

According to the complaint, Pamela Palmiter was an employee of Medical Associates for two years and had received approval from the employer for her off-duty use of medical marijuana. When Medical Associates was being acquired by Commonwealth Health Systems, Palmiter was told that her use of marijuana offsite would be “grandfathered in” and “everything would be fine related to... getting approval for medical marijuana and her continuing to work.”

Palmiter further alleges that, shortly after receiving these assurances, she applied for a position with Commonwealth Health Systems and was scheduled to undergo a drug test. She reported her use of medical marijuana and was advised that she would not be permitted to work for them based on the results of her drug test. After Palmiter filed a lawsuit, she was advised by her treating physician, now an employee of Commonwealth Health Systems, that she could no longer treat Palmiter due to a “conflict of interest.”

Palmiter filed suit on a number of grounds, including breach of contract, invasion of privacy, violation of public policy and violation of the MMA. The employer sought to dismiss all counts. The court agreed with Commonwealth Health Systems on all claims except the MMA and public policy claims and set forth a lengthy analysis explaining its reasoning for allowing those two claims to proceed.

## *Court interpretation of claims under the Medical Marijuana Act*

The employer objected to the MMA claim based on their interpretation that Palmiter had no private cause of action under the MMA because none is articulated in the statute. In finding a private cause of action, the court noted that [Section 2103\(b\) of the Act](#) specifically provides that: “No employer may discharge... or otherwise discriminate or retaliate against an employee regarding an employee’s compensation, terms, conditions, location or privileges solely on the basis of such employee’s status as an individual who is certified to use medical marijuana.” However, the MMA “does not grant any state agency or commission the power to enforce or regulate the... protections set forth therein.”

The court reviewed other states’ medical marijuana statutes and their court decisions finding implied rights of action for employees. The court further observed that a civil penalty does not compensate or reinstate a wrongfully discharged medical marijuana user. The court concluded that, without a private right to sue, “the anti-discrimination directive in Section 2103(b)(1) would be rendered impotent,” and allowed Palmiter’s MMA claim to proceed.

Commonwealth Health Systems had also argued for dismissal of Palmiter’s public policy claim, asserting that her case could not support an exception to the at-will employment doctrine based on an alleged “wrongful discharge which threatens public policy” without showing a “clear mandate of public policy.” The court found that Pennsylvania case law details multiple exceptions to the at-will employment doctrine where a termination occurs for a reason that is prohibited by statute. Finding that Palmiter set forth a case for discharge based solely on her status as a certified medical marijuana user, a violation of the MMA statute, the court allowed her public policy claim to proceed.

## *Takeaways for employers*

Based on Palmiter and other case law, employers should consider the following:

- In states where there is a medical marijuana statute specifically authorizing the use of medical marijuana and prohibiting discrimination based on the use of medical marijuana, courts have generally found a private cause of action allowing employees to proceed with claims against employers
- Employers who dismiss employees based solely on status as a certified medical marijuana user, contrary to state statutes, should expect to be challenged in private lawsuits
- Disability discrimination statutes, not at issue in Palmiter but invoked in other medical marijuana cases, may require employers to undertake additional inquiry into the feasibility of accommodating medical marijuana use offsite and offduty
- Neither the Palmiter case, nor the Pennsylvania MMA, requires employers to permit medical marijuana use or possession onsite or on-duty; nor does either require employers to tolerate working while impaired

Saxton & Stump attorney [Rick Hackman](#) is available to discuss how the Palmiter interpretation may impact your business and how our [Labor and Employment Law Group](#) can review your employment policies and provide advice to help you navigate medical marijuana in the workplace.

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